

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0284-04
Bill No.: SCS for HCS for HB 215
Subject: Attorneys; Office of Administration; Crimes and Punishment; Criminal Procedure
Type: Original
Date: April 30, 2013

Bill Summary: This proposal revises various laws relating to criminal procedure.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$100,000)
Total Estimated Net Effect on General Revenue	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$100,000)	(Unknown - could exceed \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Local Government	Unknown or (Unknown)	Unknown or (Unknown)	Unknown or (Unknown)

FISCAL ANALYSIS

ASSUMPTION

§ 217.345 - offenders under 18:

In response to a similar proposal from this year (SB 338), officials from the **Department of Corrections (DOC)** stated on June 20, 2012, the Department of Justice published the final federal standard on the Prison Rape Elimination Act (PREA) and it took effect August 20, 2012. DOC has one year from the effective date to come into full compliance with the revised PREA standards. Section 115.14 requires DOC to provide sight and sound segregation for youthful offenders under 18 years of age (17 and under). Missouri currently provides such segregation for offenders under 17 years of age (16 and under).

Passage of HB 635 would provide for operational efficiencies for the DOC in that all offenders under 18 could be housed together and sight and sound segregated from adult offenders age 18 and over. The DOC considers that housing the under 17 year olds with the 17 year olds does not impact the safety of the under 17 year olds. In fact, the research done for the Adult Internal Classification System (AICS) review supports integrating the two groups of young offenders.

If this bill were not to pass, the DOC would be required by current MO statute to maintain segregation for 3 groups as opposed to 2:

- 1) offenders under 17 years of age (16 and under,)
- 2) offenders 17 years of age, and
- 3) offenders 18 years of age and older.

Combining all youthful offenders, yet keeping them separate from the adult offender population, makes sense fiscally and programmatically and also provides compliance with the new PREA standard with no added fiscal impact to the DOC.

§§ 544.455 & 557.011 - electronic criminal monitoring:

Oversight assumes this part of the proposal permits a person who is placed on house arrest with electronic monitoring to pay the costs of monitoring themselves or if the person on house arrest is unable to pay the costs of monitoring themselves have those costs paid by the county commission. The county commission must agree to pay the costs of electronic monitoring from the general revenue of the county.

ASSUMPTION (continued)

Oversight assumes the proposal is permissive and some county commissions will elect to pay the cost of electronic monitoring and other county commissions will choose not to pay for the costs of monitoring. **Oversight** will show \$0 or an unknown cost to county commissions dependant on the number of defendants released on electronic monitoring that cannot pay the cost of monitoring.

§ 559.036 - changes regarding probation:

In response to a similar proposal from this year (SB 414), **Oversight** received the following responses:

Officials at the **Department of Corrections (DOC)** assume passage of this proposal would require significant alterations to the current process as offenders are not currently brought before a judge for either a preliminary hearing or parole revocation hearing as they are held under the purview of the DOC's Parole Board. There were 4,453 referrals for a board hearing following a revocation in 2012. Specifically, the statute imposes a new requirement to ensure counsel is offered by a judge for offenders under parole or conditional release in conjunction with a preliminary hearing, or final hearing if the preliminary hearing is waived (RSMo 217.720.2). A new administrative structure would have to be created, involving significant ongoing staff time commitments, to allow for judicial involvement in preliminary and/or final revocation hearings related to cases under the auspices of the Parole Board. This will be a significant additional burden to the courts, the DOC and the public defender system. It is believed passage of this proposed legislation would have a significant financial impact for the DOC.

Officials at the **Office of the State Public Defender (SPD)** assume it is the risk of jail time that is the constitutional trigger requiring the appointment of counsel to the indigent accused. This proposal has the potential to reduce the number of cases requiring public defender services. The extent of that reduction will depend upon how the Prosecuting Attorneys and Judges utilize the new statutes.

Requiring the Prosecuting Attorney to indicate at the beginning of a misdemeanor case whether he intends to seek jail time could eliminate a number of public defender cases that usually wind up without receiving jail time.

Currently by statute, public defenders are required to handle all Probation Revocation cases. This proposal changes this by requiring public defenders in cases only when a judge determines that the appointment of counsel is necessary to protect the person's due process rights under section 217.720 or section 559.036. The number of Probation Violation cases will undoubtedly

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ASSUMPTION (continued)

reduced. However, the extent of that reduction cannot be determined at this time.

Because of the overload the Public Defender System is operating under, it is not anticipated that the pending legislation would reduce current staffing but it could reduce the number of attorneys required to bring the caseloads of the Missouri State Public Defender System to the American Bar Association standards.

Oversight will assume the proposal would result in a significant savings to the SPD. Although SPD was unable to quantify the savings, Oversight assumes the savings could exceed \$100,000 per fiscal year.

§§ 559.100, 559.105 & 570.120 - restitutions paid:

In response to a similar proposal from this year (HB 214), **Oversight** received the following responses:

Officials from the **Missouri Office of Prosecution Services (MOPS)** state this bill would have a positive fiscal impact on the Missouri Office of Prosecution Services. The estimated MINIMAL annual impact could be \$41,420. However the impact could be greater.

MOPS attempted to survey all 115 counties (which includes the City of St. Louis) as to how many cases in FY2010 that restitution was ordered. It should be noted restitution did not include cases of bad checks. Fifty-seven (57) counties responded to the survey. Of those 57 counties, there were a total of 8,284 cases in which restitution was ordered.

Assuming that the other 58 counties all have similar numbers, fiscal impact could be \$83,565 to \$115,020. The theory to determine the fiscal impact of HB 215 on the Missouri Office of Prosecution Services was to survey all counties as to how many cases there were in FY 2010 that restitution was ordered, then, add the total number of cases and multiple times the proposed minimum \$5.00 fee.

The counties that responded to the survey included: Adair, Andrew, Atchison, Audrain, Barry, Bates, Buchanan, Callaway, Camden, Cape Girardeau, Cedar, Christian, Clay, Cole, Cooper, Dade, Dent, Franklin, Gasconade, Gentry, Greene, Grundy, Harrison, Henry, Howard, Howell, Jasper, Jefferson, Johnson, Knox, Laclede, Livingston, Maries, Marion, Mercer, Miller, Newton, Oregon, Osage, Pemiscot, Pike, Platte, Randolph, Ray, Ripley, Saline, Shelby, St. Charles, St. Francois, St. Genevieve, St. Louis City, St. Louis County, Stone, Taney, Warren, Worth, Wright.

ASSUMPTION (continued)

Based upon the estimate provided by MOPS, **Oversight** will assume an additional \$100,000 of restitution paid to the Missouri Office of Prosecution Services Fund annually.

Officials from the **Department of Corrections (DOC)** state the bill enhances the restitution statute to include not only tampering and stealing offenses, but for any offense the courts so choose. Once the court orders restitution it is considered a mandate and the DOC is authorized to remove funding from the inmate's account (if it exists) while the defendant is incarcerated. Failure to pay mandated restitution may result in extension to the maximum term of parole which keeps the offender under supervision longer with Probation and Parole (P&P) or a revocation may mean time served in prison. Monitoring offender's restitution payment status is now enhanced for P&P staff since the volume of restitution cases will increase.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender cost either through incarceration (FY11 average of \$16.878 per offender, per day, or an annual cost of \$6,160 per inmate) or through supervision provided by the Board of Probation and Parole (FY11 average of \$5.12 per offender, per day or an annual cost of \$1,869 per offender).

In summary, passage of this bill has the potential for costs to the department and the exact fiscal impact is unknown for the DOC per each year.

Oversight assumes the cost anticipated by the DOC could exceed \$100,000 each year.

Oversight will assume the proceeds collected into the local Administrative Handling Cost Fund would be used in the same year by prosecuting attorneys and circuit attorneys.

§ 573.037 - child pornography:

In response to a similar proposal from this year (SB 250), officials from the **Department of Corrections (DOC)** stated the penalty provision component of this bill resulting in potential fiscal impact for DOC, is for up to a class B felony. Currently, the DOC cannot predict the number of new commitments which may result from the enhancement of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender cost either through

ASSUMPTION (continued)

incarceration (FY12 average of \$17.059 per offender, per day, or an annual cost of \$6,227 per inmate) or through supervision provided by the Board of Probation and Parole (FY12 average of \$4.960 per offender, per day, or an annual cost of \$1,810 per offender).

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the department. Seventeen (17) persons would have to be incarcerated per each fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

Officials from the **Office of the State Courts Administrator (CTS)** assume Sections 600.011 - 600.042 may have some, unquantifiable at this time, impact, but there is no way to quantify that currently. Any significant changes in workload will be reflected in future budget requests.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
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GENERAL REVENUE

Costs - Department of Corrections

Increased costs of having preliminary hearings and/or parole revocations before a judge instead of Parole Board §559.036	(Unknown)	(Unknown)	(Unknown)
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Savings – Office of the State Public Defender

Reduced cases §559.036	More than \$100,000	More than \$100,000	More than \$100,000
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Costs - Department of Corrections

Potential longer incarceration, potential extension to the maximum term of parole (longer supervision) and additional monitoring (Section 559.105)	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$100,000</u>)
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ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$100,000</u>)	(Unknown - could exceed <u>\$100,000</u>)
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<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
LOCAL POLITICAL SUBDIVISIONS			
<u>Income</u> - Administrative Handling Costs - Maximum of \$75 per restitution §559.100	Unknown	Unknown	Unknown
<u>Costs</u> - prosecuting attorney or circuit attorney costs to implement provision of the bill in collecting restitution.	(Unknown)	(Unknown)	(Unknown)
<u>Cost</u> - County Commissions § 544.455 and 557.011 - Electronic Monitoring	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
ESTIMATED NET EFFECT TO THE ADMINISTRATIVE HANDLING COST FUND	<u>Unknown or (Unknown)</u>	<u>Unknown or (Unknown)</u>	<u>Unknown or (Unknown)</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill modifies provision relating to criminal procedures.

Section 600.062 has an emergency clause.

This legislation would not duplicate any other program and would not require additional capital improvements or rental space. Part of the proposal is federally mandated (Section 217.345).

SOURCES OF INFORMATION

Office of the State Courts Administrator
Office of Prosecution Services
Office of the State Public Defender
Department of Corrections



Ross Strobe
Acting Director
April 30, 2013